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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GILBERT DEMETRTUS AGUILAR,

Petitioner,

vs.

RENEE BAKER, *et al.*,

Respondents.

3:12-CV-00397-RCJ-WGC

ORDER

Gilbert Aguilar, a prisoner at Ely State Prison, moves the Court for free copies of his petition (ECF No. 5) and for appointment of counsel and an evidentiary hearing (ECF No. 6). Petitioner asserts that he did not retain and has not received a copy of his original petition and the voluminous exhibits he submitted with the petition and that he will need the documents to pursue this action. He asserts that he is indigent. This motion shall be granted to the extent that the Clerk shall be directed to return a copy of the petition and the original exhibits to petitioner.

The motion for counsel and for an evidentiary hearing shall be denied. There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the

1 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See
2 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The claims in
3 this case are not especially complex. Also, the Court notes from the petition, and from the other
4 documents that petitioner has submitted to the Court, that petitioner is able to present matters to the
5 Court in an organized and understandable manner.

6 The issue of granting an evidentiary hearing is premature and shall not be considered
7 until such time as the merits of the claims raised are put at issue.

8 **IT FURTHER IS ORDERED** that the motion for copies (ECF No. 5) is
9 **GRANTED**. The Clerk shall send to petitioner a copy of the petition (ECF No. 8-1) and the original
10 exhibits that petitioner submitted in support of the petition.

11 **IT IS FURTHER ORDERED** that the motion for appointment of counsel and for an
12 evidentiary hearing (ECF No. 6) is **DENIED**.

13 Dated this 21st day of November, 2012.

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16 UNITED STATES DISTRICT JUDGE
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